IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1072 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNA TL KHEDUT SAHKARI KHAND UDYOG SAHKARI MANDLI LTD

Versus

UGABHAI B RATHOD

Appearance:

1. Special Civil Application No. 1072 of 1989

MR ND NANAVATI for Petitioner No. 1

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order of the Labour Court, Rajkot in Recovery Application No. 1868 of 1986, whereby, the respondent is

ordered to be paid the amount of due wages, the dues arising from his earned leaves and the due amount of gratuity. After admission of this petition in the year 1989, by an interim order, the petitioner was required to deposit an amount of Rs.11,713=00, which was awarded by way of gratuity by the Labour Court and that amount has already been withdrawn by and paid to the respondent.

2. Learned counsel for the petitioner vehemently argued that the Labour Court had no jurisdiction to grant the amount of gratuity in so far as the remedy for its recovery was specifically provided under the Payment of Gratuity Act, 1972, which is a self-contained code. The argument and discussion, however, is academic in view of the fact that the respondent- workman is already paid the amount. Considering the arguments as regards the other dues determined by the Labour Court in the impugned order, it was seen that the Labour Court has, after appreciation of the evidence on record, arrived at the finding of fact that a total sum of Rs.9,411=90 remained due as an undisputed amount, from which, after deducting the amount of Provident Fund, the amount of Rs.8,638=90 remained outstanding and payable, over and above the sum of Rs.430=86 due towards the wages.

3. It was contended on behalf of the petitioner that none of the aforesaid amounts ought to have been awarded by the Labour Court in view of the fact that there were allegations of misappropriation against the respondent and a civil as well as criminal case was filed against him. The petitioner has not placed on record or pointed out any order under which the legal dues of the respondent were withheld or forfeited. Therefore, at best, there was a decision of the petitioner to adjust the amount of legal dues of the respondent against its claim based on allegations of misappropriation. When a workman approaches Labour Court by way of a recovery application under Section 33-C of the Industrial Disputes Act, he has to establish his entitlement to receive from the employer any money or benefit capable of being computed in terms of money. Once he establishes his existing right under any statute or instrument, the Labour Court may determine the due amount and proceed to issue a certificate for recovery of the same. The provisions of Section 33-C do not provide for adjudication of a claim of the employer. Therefore, unless the existing right of the workman is established to have been affected by a decision or order of the employer, the Labour Court would not have the jurisdiction to adjudicate or enforce the claim of the employer against the workman and could not have any

alternative but to determine the amount due to the workman. In this view of the matter, there being otherwise no dispute about the amounts due and the calculations thereof, there is no reason to interfere with the impugned order of the Labour Court.

4. In these circumstances and for the reasons discussed hereinabove, there is no substance in the petition and, therefore, the same is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

(D.H.Waghela,J.)

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